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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952.

No. 357

GORDON WOODROFFE CORPORATION,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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To the Chief Justice of the United States and the Associate Justices of the Supreme Court:

Summary and Short Statement of the Matter Involved

This is a suit to recover damages in the amount of $240,843.75 caused to the petitioner by the respondent's breach and wrongful cancellation of a contract whereunder the petitioner agreed to sell and the respondent agreed to buy a certain electric generating plant.

Under an Act of Congress entitled "An Act to provide assistance to Greece and Turkey", 61 Stat. 103, (Appendix A, *infra* pp. 11-15) the President of the United States was granted the power to render financial aid to Greece and Turkey and was authorized to procure and transfer to those countries articles, services and information. Under Section

5 of the Act the President was empowered to "exercise any power or authority conferred upon him pursuant to this Act through such department, agency, independent establishment or officer of the Government as he shall direct." Pursuant to such authority the President issued Executive Order 9857 (12 Fed. Reg. 3331, Appendix A, *infra* pp. 16-17), authorizing the Secretary of State, through such departments, agencies, and independent establishments of the Government as he may designate, to exercise any power or authority conferred upon the President by the Act, including the expenditure of funds. Said Executive Order also provided that the Chief of the Mission to Greece or Turkey appointed by the President under the Act shall, under the guidance and instruction of the Secretary of State direct the United States activities within Greece or Turkey in furnishing assistance under the Act. The Secretary of State established an office in Washington, D. C., known as the Office of the Coordinator for Aid to Greece and Turkey, which office consisted of a Coordinator, Deputy Coordinator, two Special Assistants, and some administrative personnel (R. 34). George Crews McGhee was the Coordinator for the American Mission for Aid to Greece and Turkey (R. 34) and is presently our Ambassador to Turkey. Walter Wilds was the Deputy Coordinator and Aloysius J. Walsh was one of two Special Assistants to the Coordinator (R. 34).

The petitioner, Gordon Woodroffe Corporation, through its parent company, Gordon, Woodroffe & Co., Ltd. of London, England, obtained a firm irrevocable option to purchase a certain 20,000 KVA turbo alternator generator which was then owned by Compagnie de Tramways et d'Ecliarge de Tientsin (R. 35, 38, 45-46). In December of 1947, the petitioner's agent, Walter Duke, visited the State Department in Washington, D. C., and saw Mr. McGhee, the Coordinator, and advised him that his client had a power plant

which was being offered for sale and inquired whether he or his Department would be interested in it (R. 39). Mr. McGhee stated that such matters came within the sphere of Mr. Walsh and therefore introduced Mr. Duke to Mr. Walsh, it being his intention to leave the whole thing in Mr. Walsh's hands since it was his responsibility in the organization (McGhee, Tr. 136). Mr. Walsh expressed interest in the power plant and stated that he would consider it (Duke, Tr. 67). Accordingly, Mr. Walsh communicated with Mr. Gillmore of the Mission in Athens and learned that it might be interested in obtaining the power plant and requested particulars which were furnished (R. 39, 40 Pltff.'s Ex. 28). Thereafter, the petitioner pressed Mr. Walsh for a decision since its option was running out (R. 50-51). Mr. Walsh telephoned the Mission in Athens and interpreted his telephone conversation with it as meaning that it was more than interested in the power plant and that it should be purchased (R. 51). Accordingly, Mr. Walsh prepared a telegram of acceptance of petitioner's offer, which telegram was approved by Mr. Walter Wilds, the Deputy Coordinator, and signed by the State Department (Pl. Ex. 14 R. 52). A confirmation of the acceptance was cabled to London, England, over the signature of the highest ranking member of the United States Department of State, namely, Secretary of State Marshall (Pl. Ex. 15, R. 52) to whom the President had delegated (Executive Order 9857) all of the powers conferred under the Act for assistance to Greece (61 Stat. 103).

The plaintiff, relying upon the telegram of acceptance (Pl. Ex. 14), and the Gordon Woodroffe Co., Ltd., relying upon the confirmation of said acceptance bearing the signature of the Secretary of State (Pl. Ex. 15), obtained permission from the Bank of England to release the equivalent sum of $25,000 in sterling and obtained an extension of

plaintiff's option from the owner (R. 52-53). Several days thereafter the State Department in Washington learned for the first time that the same generator was being offered for sale in Athens at a lower figure by a person who purported to represent the owner (R. 53). The State Department in Washington also learned that Mr. Walsh had interpreted the telephone conversation with the Mission in Athens in a manner not intended by Mr. Gillmore. The State Department learned that the Mission apparently had not intended that Mr. Walsh purchase the machine and that they had written him previously advising against it but the letter from the Mission in Athens to the State Department in Washington had missed the courier and had not been received (R. 49, 53). Thereupon, the State Department in Washington attempted to cancel and repudiate the contract which it had made with petitioner giving as its only specific reason the fabricated ground that a prior binding contract had already been made for the purchase of the same generator in Athens (Pl. Ex. 23, R. 54), which ground was completely baseless as the record unequivocally shows. In fact the day before defendant's telegram of cancellation was sent, the State Department in Washington had been advised by the American Mission in Greece that the plaintiff did hold an option on the generator and that said option had been extended to March 5 (Def. Ex. 13).

Thereafter this suit was brought which resulted in a judgment dismissing the petition. The majority opinion of the United States Court of Claims (R. 56-61) sustained all of plaintiff's contentions except it concluded that the State Department in Washington, and particularly Aloysius J. Walsh, did not have authority to bind the United States and on that basis alone decided against plaintiff. The dissenting opinion of Judge Madden (R. 61-64), concurred in by Judge Howell, felt otherwise and stated: "When the Government abandoned its immunity from suit, I think it did

not intend to assume the status of an infant or idiot who could repudiate his contracts if they did not turn out to be advantageous" (R. 64).

Opinion Below

The opinion of the United States Court of Claims dismissing the petition herein is reported in 104 F. Supp 984 (R. 56-61). The opinion of the United States Court of Claims dated July 15, 1952, overruling petitioner's motion for a new trial has not yet been officially reported (R. 65).

Jurisdictional Statement

The judgment of the Court of Claims was entered on June 3, 1952 (R. 64). A motion for rehearing filed on June 30, 1952, was overruled on July 15, 1952 (R. 65). The jurisdiction of this Court is invoked under Section 1255, subdivision 1 of Title 28, United States Code.

Statutes Involved

The pertinent statutory provisions and the Executive Order issued pursuant to the authority of that statute are printed in Appendix A, *infra*, pages 11 to 17.

Question Presented

The question here presented is whether under an Act of Congress entitled "An Act to Provide Assistance to Greece and Turkey" (61 Stat. 103), and the Executive Order issued thereunder (Executive Order #9857), the State Department, acting through the Office of Coordinator for Aid to Greece and Turkey, had authority to and did contract on behalf of the United States.

Reason for Allowance of Writ

This suit turns upon whether the State Department, acting through the Office of Coordinator for Aid to Greece and

Turkey, which office was established by the Secretary of State (R. 34), had authority to bind the United States. The Federal statute (Act of May 22, 1947, 61 Stat. 103) and the Executive Order No. 9857 issued pursuant thereto, (Appendix A, *infra* pp. 11-17) clearly show the existence of such authority. By Section 5 of that Act Congress appropriated several hundred millions of dollars which it authorized the President to spend for aid to Greece and Turkey. The Act also empowered the President to delegate this authority and the President did delegate his authority to the Secretary of State (Executive Order No. 9857, 12 Fed. Reg. 3331) and provided that the Secretary of State might exercise any such authority through such departments, agencies, and independent establishments of the Government as he might designate. Thereafter, the Secretary of State established as an aid an office in Washington known as the Coordinator for Aid to Greece and Turkey (R. 34). It is with this office that the petitioner dealt. In the majority opinion of the Court of Claims, Judge Whitaker, in referring to the question of authority, stated (R. 58) that "While his [Chief of the Mission] authority was subject to the orders of the Secretary of State and of the President, it is clear in the absence of orders from one of these two men in person and not through subordinates acting on their own initiative, he was the boss."

Although the Court recognized that the President or Secretary of State Marshall could have acted and effectively contracted for the purchase of material for use in Greece, it denied that either of those men could act other than "in person" (R. 58). Such reasoning is contrary to the plain intent of the Federal Statute and Executive Order. Congress, in granting to the President the power to render assistance, expressly recognized that in exercising those powers the President would not act in person but rather through others (61 Stat. 103, Sec. 5) and the President in

issuing Executive Order 9857 whereby he delegated his power to the Secretary of State authorized the Secretary of State to exercise such powers personally or through agents. In the face of the clear language of the statute and Executive Order, it is fallacious to argue that President Truman or Secretary of State Marshall could only act "in person", and such finding represents a complete misconstruction and distortion of the plain language of the Federal statute here involved. It was under the authority of the Executive Order that the Secretary of State established the office of Coordinator and appointed George C. McGhee as Coordinator and Walter Wilds as Deputy Coordinator and Aloysius J. Walsh as one of two Special Assistants to the Coordinator (R. 34). Those men were direct representatives and spokesmen for the Secretary of State in the State Department clothed with titles of authority. The Hon. Judge Madden, in writing the dissenting opinion, (R. 61-64), stated in part as follows:

> "The court's decision denies enforcement to a contract purportedly made on behalf of the United States by officers of the United States. The denial is upon the ground that those agents lacked authority to contract for the United States. I think the court is wrong in its conclusion that they lacked authority." (R. 61-62)
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> "Mr. Griswold having been appointed Chief of the American Mission for Aid to Greece, the Secretary of State appointed George C. McGhee, Coordinator, Walter Wild, Deputy Coordinator and Aloysius J. Walsh one of two special assistants to the Coordinator. These few men were the representatives and spokesmen, in the State Department's Washington office, of a project which had some hundreds of millions of dollars to spend." (R. 62)
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> • • • • • • •

"• • • After extended negotiations, Mr. Walsh agreed to the purchase of the plant and his immediate superior, Mr. Wild, the Deputy Coordinator, signed the telegram to the plaintiff accepting the plaintiff's offer and purporting to close the contract. (R. 62)

"The court's decision concludes that Mr. Wild and Mr. Walsh did not have authority to do what they did. I think they did have authority. They had been put, by the Secretary of State, into an office which had a title which indicated responsibility. There is not the slightest evidence that Mr. McGhee, the Coordinator, or General Marshall, the Secretary of State, would not have personally signed the telegram of acceptance if that had been the habit of the department. That it was not the practice was natural because the statute and the Executive Order expressly authorized by the Statute permitted sub-delegation, and the Secretary's appointment of the officials to their designated positions constituted that sub-delegation, and removed the necessity of having papers formally signed by high officials who had, in fact, given no consideration to their content. • • •" (R. 62-63)

The Court in its special findings No. 5 and No. 6 (R. 33-35) set forth certain portions of a manual or regulations issued by the Secretary of State and apparently relied upon them in arriving at its conclusion that the Coordinator's office did not have the authority to contract for the Government. The recognition of the contents of this manual was prejudicial to the petitioner and its admission into evidence was improper and constitutes error. In Finding No. 4 (R. 33) the Court specifically found that distribution of this manual was limited to the Mission in Greece and to other offices in the Department having a functional interest in the Aid to Greece program and that there was no evidence that the petitioner ever saw or was acquainted with the regulations or procedures set forth in the manual or that its contents were ever published or released for pub-

lic information. It is submitted that this manual was not binding upon third parties as it was not published in the Federal Register in accordance with the requirements of Sections 305 and 311 of Title 44, United States Code.

The Court in its opinion (R. 56-61) in finding that the Coordinator's office had no authority to contract for the generator, leaned on the cases of *Federal Crop Ins. Corp.* v. *Merrill,* 332 U. S. 380 and *G. S. Kincaid* v. *U. S.,* 119 Ct. of Cl. 257. In each of those cases there were regulations which were (1) duly published in the Federal Register and accordingly were binding on third parties, and (2) expressly negatived the subordinates' authority to do certain things. In the instant case, however, the regulations set forth in the manual issued by the Secretary of State (1) were of a restrictive nature circulated for official use only within the Department and not published in the Federal Register and, therefore, as stated above, not binding upon third parties and indeed improperly received in evidence, and (2) did not contain any language negativing the right of the Coordinator's office in the State Department to purchase supplies as the Secretary of State was authorized to do under the statute and Executive Order referred to above.

It is submitted that the question here presented should be resolved by this Court. Its effect upon business dealings by private citizens with the government is of wide concern to the public at large. The courts have gone far to insulate the government from acts of its agents but never before have they gone this far. If the decision of the Court of Claims is not corrected, private citizens may well be afraid to deal with subordinates and might not feel safe unless direct and personal contact is had with only the very top level governmental personnel. Commerce and trade cannot function smoothly in such a manner.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

An Act to Provide for Assistance to Greece and Turkey (Public Law 75 (80th Congress, 1st Session)):

Whereas the Governments of Greece and Turkey have sought from the Government of the United States immediate financial and other assistance which is necessary for the maintenance of their national integrity and their survival as free nations; and

Whereas the national integrity and survival of these nations are of importance to the security of the United States and of all freedom-loving peoples and depend upon the receipt at this time of assistance; and

Whereas the Security Council of the United Nations has recognized the seriousness of the unsettled conditions prevailing on the border between Greece on the one hand and Albania, Bulgaria, and Yugoslavia on the other, and, if the present emergency is met, may subsequently assume full responsibility for this phase of the problem as a result of the investigation which its commission is currently conducting; and

Whereas the Food and Agriculture Organization mission for Greece recognized the necessity that Greece receive financial and economic assistance and recommended that Greece request such assistance from the appropriate agencies of the United Nations and from the Governments of the United States and the United Kingdom; and

Whereas the United Nations is not now in a position to furnish to Greece and Turkey the financial and economic assistance which is immediately required; and

Whereas the furnishing of such assistance to Greece and Turkey by the United States will contribute to the freedom and independence of all members of the United Nations in conformity with the principles and purposes of the Charter: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of any other law, the President may from time to time when he deems it in the interest of the United States furnish assistance to Greece

and Turkey, upon request of their governments, and upon terms and conditions determined by him:

(1) by rendering financial aid in the form of loans, credits, grants, or otherwise, to those countries;

(2) by detailing to assist those countries any persons in the employ of the Government of the United States; and the provisions of the Act of May 25, 1938 (52 Stat. 442), as amended, applicable to personnel detailed pursuant to such Act, as amended, shall be applicable to personnel detailed pursuant to this paragraph: *Provided, however,* That no civilian personnel shall be assigned to Greece or Turkey to administer the purposes of this Act until such personnel have been investigated by the Federal Bureau of Investigation;

(3) by detailing a limited number of members of the military services of the United States to assist those countries, in an advisory capacity only; and the provisions of the Act of May 19, 1926 (44 Stat. 565), as amended, applicable to personnel detailed pursuant to such Act, as amended, shall be applicable to personnel detailed pursuant to this paragraph;

(4) by providing for (A) the transfer to, and the procurement for by manufacture or otherwise and the transfer to, those countries of any articles, services, and information, and (B) the instruction and training of personnel of those countries; and

(5) by incurring and defraying necessary expenses, including administrative expenses and expenses for compensation of personnel, in connection with the carrying out of the provisions of this Act.

SEC. 2. (a) Sums from advances by the Reconstruction Finance Corporation under section 4 (a) and from the appropriations made under authority of section 4 (b) may be allocated for any of the purposes of this Act to any department, agency, or independent establishment of the Government. Any amount so allocated shall be available as advancement or reimbursement, and shall be credited, at the option of the department, agency, or independent

establishment concerned, to appropriate appropriations, funds or accounts existing or established for the purpose.

(b) Whenever the President requires payment in advance by the Government of Greece or of Turkey for assistance to be furnished to such countries in accordance with this Act, such payments when made shall be credited to such countries in accounts established for the purpose. Sums from such accounts shall be allocated to the departments, agencies, or independent establishments of the Government which furnish the assistance for which payment is received, in the same manner, and shall be available and credited in the same manner, as allocations made under subsection (a) of this section. Any portion of such allocation not used as reimbursement shall remain available until expended.

(c) Whenever any portion of an allocation under subsection (a) or subsection (b) is used as reimbursement, the amount of reimbursement shall be available for entering into contracts and other uses during the fiscal year in which the reimbursement is received and the ensuing fiscal year. Where the head of any department, agency, or independent establishment of the Government determines that replacement of any article transferred pursuant to paragraph (4) (A) of section 1 is not necessary, any funds received in payment therefor shall be covered into the Treasury as miscellaneous receipts.

(d) (1) Payment in advance by the Government of Greece or of Turkey shall be required by the President for any articles or services furnished to such country under paragraph (4) (A) of section 1 if they are not paid for from funds advanced by the Reconstruction Finance Corporation under section 4 (a) or from funds appropriated under authority of section 4 (b).

(2) No department, agency, or independent establishment of the Government shall furnish any articles or services under paragraph 4 (A) of section 1 to either Greece or Turkey, unless it receives advancements or reimbursement therefor out of allocations under subsection (a) or (b) of this section.

SEC. 3. As a condition precedent to the receipt of any

assistance pursuant to this Act, the government requesting such assistance shall agree (a) to permit free access of United States Government officials for the purpose of observing whether such assistance is utilized effectively and in accordance with the undertakings of the recipient government; (b) to permit representatives of the press and radio of the United States to observe freely and to report fully regarding the utilization of such assistance; (c) not to transfer, without the consent of the President of the United States, title to or possession of any article or information transferred pursuant to this Act nor to permit, without such consent, the use of any such article or the use or disclosure of any such information by or to anyone not an officer, employee, or agent of the recipient government; (d) to make such provisions as may be required by the President of the United States for the security of any article, service, or information received pursuant to this Act; (e) not to use any part of the proceeds of any loan, credit, grant, or other form of aid rendered pursuant to this Act for the making of any payment on account of the principal or interest on any loan made to such government by any other foreign government; and (f) to give full and continuous publicity within such country as to the purpose, source, character, scope, amounts, and progress of the United States economic assistance carried on therein pursuant to this Act.

SEC. 4. (a) Notwithstanding the provisions of any other law, the Reconstruction Finance Corporation is authorized and directed, until such time as an appropriation shall be made pursuant to subsection (b) of this section, to make advances, not to exceed in the aggregate $100,000,000, to carry out the provisions of this Act, in such manner and in such amounts as the President shall determine.

(b) There is hereby authorized to be appropriated to the President not to exceed $400,000,000 to carry out the provisions of this Act. From appropriations made under this authority there shall be repaid to the Reconstruction Finance Corporation the advances made by it under subsection (a) of this section.

SEC. 5. The President may from time to time prescribe

such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred upon him pursuant to this Act through such department, agency, independent establishment, or officer of the Government as he shall direct.

The President is directed to withdraw any or all aid authorized herein under any of the following circumstances:

(1) If requested by the Government of Greece or Turkey, respectively, representing a majority of the people of either such nation;

(2) If the Security Council finds (with respect to which finding the United States waives the exercise of any veto) or the General Assembly finds that action taken or assistance furnished by the United Nations makes the continuance of such assistance unnecessary or undesirable;

(3) If the President finds that any purposes of the Act have been substantially accomplished by the action of any other intergovernmental organizations or finds that the purposes of the Act are incapable of satisfactory accomplishment; and

(4) If the President finds that any of the assurances given pursuant to section 3 are not being carried out.

SEC. 6. Assistance to any country under this Act may, unless sooner terminated by the President, be terminated by concurrent resolution by the two Houses of the Congress.

SEC. 7. The President shall submit to the Congress quarterly reports of expenditures and activities, which shall include uses of funds by the recipient governments, under authority of this Act.

SEC. 8. The chief of any mission to any country receiving assistance under this Act shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such functions relating to the administration of this Act as the President shall prescribe.

Approved May 22, 1947.

Executive Order

Regulations for Carrying Out the Provisions of the Act Entitled "An Act to Provide for Assistance to Greece And Turkey"

By virtue of the authority vested in me by the act of May 22, 1947, entitled "An Act to provide for assistance to Greece and Turkey", hereinafter referred to as the act, and as President of the United States, I hereby prescribe the following regulations for carrying out the provisions of the act:

1. Subject to such policies as the President may from time to time prescribe, the Secretary of State is hereby authorized, through such departments, agencies, and independent establishments of the Government as he may designate, to exercise any power or authority conferred upon the President by the act, including expenditure of funds made available for the purposes of the act.

2. The Chief of Mission to Greece or Turkey appointed by the President pursuant to section 8 of the act shall, under the guidance and instructions of the Secretary of State, direct United States activities within Greece or Turkey, as the case may be, in furnishing assistance under the act. The Secretary of State may delegate to the Chief of Mission such powers or authority conferred by this order as he may deem necessary and proper to the effective carrying out of the provisions of the act and of the basic agreement with the Government of Greece or Turkey, as the case may be, setting forth the general terms and conditions under which assistance is to be furnished.

3. The Secretary of State shall provide, and at his request other departments, agencies, independent establishments, and officers of the Government shall cooperate in providing to the extent considered feasible in keeping with their other established governmental responsibilities and to the extent that funds may be available therefor, such personnel, together with their compensation, allowances, and expenses, and such administrative supplies, facilities, and services as may be necessary and proper to the effective carrying out of the provisions of the act.

4. Subject to the provisions of paragraph 2 hereof, the powers and authority conferred upon the Secretary of State by this order shall be exercised by the Secretary or, subject to his direction and control, by such officers and agencies of the Department of State as he may designate, in the interest of effective administration and proper coordination of functions under the act.

5. The Secretary of State shall make appropriate arrangements with the Secretaries of War and the Navy, and the heads of other Government departments, agencies, and independent establishments concerned, in order to enable them to fulfill their responsibilities under the act.

(S.) HARRY TRUMAN.

The White House.
May 22, 1947.

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